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...l. 21, No. 12 JUNE—JULY 1956 Complete No. 403



...ished *by* The Corporation Trust Company and Associated Companies

***Fairbanks-Morse Company? Yes.***

***Seiberling Rubber Company? Yes.***

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The CORPORATION JOURNAL

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JUNE—JULY 1956

## Contents



## Recent Decisions

**When a New York corporation sees business to be had by opening a branch in Michigan, or a Georgia corporation feels it can get more sales by keeping spot stocks in Illinois, or a Missouri corporation finds itself low bidder on a contract in North Carolina — its lawyer can't keep it home, and no use trying! His, then, but to see that it's dressed in the proper corporate clothes for the state it's going into.**

**That, in simple English, is to see that it complies with all the requirements of the state it is going to do business in: File all the papers necessary to qualify as a foreign corporation; record them when required in the proper counties; publish in advance what, if anything, the state requires to be published; and see that after qualification it has reliable, advance notification on all the state's taxes to be paid and all the state reports to be filed.**

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# what constitutes doing business

## *Evaluation of Court Decisions*

### *3. Qualification—Decisions of the Federal Courts*

PREVIOUS DISCUSSIONS have considered the weight given to decisions of the Supreme Court of the United States,[1] and of the state courts,[2] as criteria for the determination by attorneys generally regarding what constitutes doing business by unlicensed foreign corporations, from the standpoint of the necessity of their qualification in states other than the state of their creation.

Ordinarily, litigation in the Federal courts which is concerned with the necessity of the qualification of an unlicensed foreign corporation to do business in a state, involves diversity of citizenship of the parties. In a 1938 decision predicated upon such diversity of citizenship, the Supreme Court of the United States observed:

> "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern." (*Erie Railroad Co. v. Tompkins*, 304 U. S. 64.)

Rulings of the Federal courts rendered prior to this 1938 decision of the highest court, which involved qualification do not have the thread of consistency running through them which this decision calls for. Some courts had closed their doors to unlicensed foreign corporations only when the State law declared the contracts they sought to enforce to be void, (*e. g., Mandel Bros. v. Henry A. O'Neil, Inc.*, 69 F. 2d 452; In re *Conecuh Pine Lumber & Mfg. Co.*, 180 Fed. 249; *Thomas v. Birmingham Railway, Light & Power Co.*, 195 Fed. 340), while others had permitted the use of the Federal courts when the State law merely prevented the maintenance of a suit in the State Courts by a delinquent corporation. (*David Lupton's Sons Co. v. Automobile Club of America*, 225 U. S. 489.) In the case last mentioned, decided in 1912, an unlicensed foreign corporation, doing business in New York, was permitted to maintain an action in a Federal court sitting in New York on a contract made in New York, despite the fact that the law of New York denied such a corporation the right to maintain suit on the contract in the courts of the State of New York. In 1947, the *Lupton's Sons Co.* decision

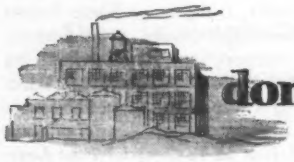
[1] "1. Qualification—Decisions of the Supreme Court," The Corporation Journal, August—September, 1954, page 3.

[2] "2. Qualification—Decisions of the State Courts," The Corporation Journal, August—September, 1955, page 123.

was regarded by the Supreme Court of the United States as being "obsolete" in so far as it was "based on diversity of jurisdiction" in *Angel v. Bullington*, 330 U. S. 183, the highest court applying its 1938 ruling in *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, previously mentioned.

In 1949, in *Woods v. Interstate Realty Company*, 337 U. S. 535, 69 S. Ct. 1235, the Supreme Court of the United States laid down the rule that, in a suit based on diversity of citizenship, an unlicensed foreign corporation, doing business in Mississippi, which was barred by the state's law from suing in the state courts by reason of failure to qualify, was barred to the same extent from suing in a Federal court sitting in that state.

Therefore, it is customary for counsel to evaluate Federal court decisions rendered prior to 1938 which involved the necessity of qualification, in so far as they are based on diversity of citizenship, in the light of *Woods v. Interstate Realty Co.*, and to be guided by that decision and the pertinent state law and the highest state court interpretations of it, wherever available. (*American Universal Insurance Co. v. Sterling*, 203 F. 2d 161; *Canvas Fabricators, Inc. v. William E. Hooper & Sons Co.*, 199 F. 2d 485.)



# domestic corporations

## DELAWARE

### Stockholder ruled not entitled to cumulative preferred dividends related to periods prior to his acquisition of stock.

Plaintiff's certificate for 100 shares of Series A $10 par value preferred stock of defendant Delaware corporation was issued March 2, 1945. An amendment to the charter, adopted in 1937, provided that such stock should "pay dividends at the rate of six percent (6%) per annum out of its earnings, but when not so earned and paid, the dividends shall be cumulative. Said dividends shall be paid annually beginning the Fifteenth (15th) day of March, 1938." Plaintiff, in addition to dividends received or offered to him upon dissolution, related to periods subsequent to March 2, 1945, when his stock was issued, sought to establish his right to dividends at the rate of 6% from March 15, 1938 to March 2, 1945, which had been paid to those who had been stockholders during that period.

Referring to the charter provision that "dividends shall be paid annually beginning the Fifteenth (15th) day of March, 1938," the Court of Chancery, New Castle County, said: "Does this phrase constitute an agreement by the defendant that the holders of its series A preferred stock in certain circumstances will receive accrued and unpaid dividends as far back as March 15,

1938, regardless of the time of issue of the stock held? I think not, and I am unable to accept plaintiff's contention that the language on the certificate delivered to him after his purchase was consummated in itself binds defendant to pay plaintiff cumulative dividends for any period prior to issuance of the stock which he purchased." The court regarded the phrase mentioned as intended to fix a first dividend date for stock then issued and entitled to dividends, and concluded that the plaintiff had received what he was entitled to, namely, dividends from the date of issuance of stock held by him to the last dividend authorized and paid on such stock.

*Blandin v. United North and South Development Company*, 121 A. 2d 686. Ernest S. Wilson of Morford & Bennethum, for plaintiff. John P. Sinclair of Berl, Potter & Anderson, for defendant.

### Directors' power to deposit controlled subsidiary's stock, its principal asset, in a voting trust, regarded as not restricted, as matter of law, by principle of nondelegation of their managerial duties.

In *Adams et al. v. Clearance Corporation et al.*, 116 A. 2d 893, (The Corporation Journal, December 1955—January 1956, page 166), the Court of Chancery, New Castle County, ruled that the fact that a liberal interpretation of the Delaware voting trust statute in this case permitted a possible perpetuation of executive power on the part of individual directors and trustees, did not invalidate the voting trust, in the absence of any showing of statutory violation, fraud or overreaching.

Upon appeal to the Supreme Court of Delaware, on a question presented as to whether the voting trust was valid, the court, in affirming the Court of Chancery, concluded "that the power of directors to deposit in a voting trust shares of stock of a controlled subsidiary corporation is not restricted, as a matter of law by the principle of nondelegation of managerial duties, notwithstanding the fact that the shares represent the sole substantial asset of the corporation."

*Adams et al. v. Clearance Corporation et al.*, 121 A. 2d 302. John Van Brunt of Killoran & Van Brunt of Wilmington (Miller Walton of Walton, Lantaff, Schroeder, Atkins, Carson & Wahl of Miami, Fla., of counsel), for appellants. Thomas R. Mulroy of Hopkins, Sutter, Halls, Owen & Mulroy of Chicago, Ill., (Richard F. Corroon of Berl, Potter & Anderson of Wilmington, with him on the brief), for appellees.

## ILLINOIS

### Stock option for purchase of stock at price below its par value, ruled invalid under Illinois law.

Appellant, the plaintiff below, sought, among other things, a declaratory decree that a stock option was invalid. In 1951 the corporation's charter was amended to provide that any shares of common or preferred stock might, in the discretion of the board of directors, be issued and disposed of from time to time in such manner and for such consideration as might be determined by

the board, without being first offered to any class or classes of shareholders. At a special meeting of the directors in 1953 a resolution was adopted giving two of the five directors who voted for the resolution an option during a nine year period to purchase a stipulated number of shares in each case at $3 a share, of stock which had a par value of $5. The next day one of these directors cancelled his option. The remaining optionee entered into an agreement with the corporation, in which the option mentioned was granted to him to purchase 40,000 shares of common stock at $3 a share. The following day this director wrote the president of the corporation a letter stating that in consideration of and as a part of the option agreement he agreed to remain in the employ of the corporation for at least five years. Subsequently the market price rose to $8 a share. At the 1954 annual shareholders' meeting, a resolution was adopted approving, ratifying and confirming the option agreement.

The Appellate Court of Illinois, First District, First Division, was of the opinion "that there is ample implied power in Sections 5 and 24 of the Business Corporation Act and in Article 9 of the amended charter to sustain the action of the defendant corporation in entering into a valid contract with an officer or employee for a stock option." Noting a contention that the stock option was invalid because it ran to only one employee, the court observed that "an Illinois corporation may grant stock options to one or more persons." However, the court reversed a decree adverse to the plaintiff, on the ground that the stock option contract "must fail for the reason that the corporation could not contract to sell $5 stock for $3," Section 17 of the Business Corporation Act requiring that shares having a par value may be issued for such consideration not less than the par value thereof, as shall be fixed from time to time by the board of directors. The court also found that there was never any affirmative action by a qualified majority of the directors in the adoption of the stock option resolution in this case.

*Elward v. Peabody Coal Company et al.*, 132 N. E. 2d 549. Edward S. Macie and Paul F. Elward of Chicago, for appellant. Hopkins, Sutter, Halls, Owen & Mulroy of Chicago, for Peabody Coal Co., Stuyvesant Peabody, O. Gressens, Joseph Solari, Frank L. White and John T. Rettaliata. Thomas R. Mulroy, William C. Childs and George Kelm of Chicago, of counsel.

## NEW JERSEY

### Claim of New Jersey, as state of incorporation, to escheat of unclaimed dividends of stockholders, ruled superior to that of state of stockholders' last known address.

The State of New Jersey instituted this action in 1949 under its Escheats Act to recover from defendant New Jersey corporation, unclaimed dividends of stockholders payable between 1891 and 1935. Included were stockholders whose last known addresses were in Massachusetts. Massachusetts inter-

vened to assert its claim as to this group of dividends under its Escheats law, enacted in 1950.

The Supreme Court of New Jersey, after a thorough discussion of the nature of escheats and the position with respect to conflicting claims taken by various states and countries, reversed a ruling of the Chancery Division adjudging that the unclaimed dividends escheated to Massachusetts rather than New Jersey. The court concluded that "neither comity nor any compelling sense of justice with relation to the escheat policy of another state suggests that the courts of the state where the property was located or had its situs should reach out to defeat its own legislative policy."

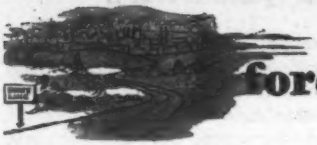
*State of New Jersey v. American Sugar Refining Company*, Supreme Court of New Jersey, January 9, 1956. Harold Kolovsky, Assistant Attorney General, argued the cause for the appellant (Grover C. Richman, Jr., Attorney General of New Jersey, Attorney; Charles J. Kehoe, Assistant Deputy Attorney General, on the brief). Harold A. Reynolds of the Massachusetts Bar, Asst. Atty. General of Massachusetts, argued the cause for the intervenor-claimant-respondent; William R. Blair, Jr., Attorney; George Fingold, Attorney General of Massachusetts, and George Luftman of the Massachusetts Bar, on the brief. Josiah Stryker argued the cause for the defendant-respondent (Stryker, Tams & Horner, Attorneys).

## NORTH CAROLINA

### Corporation having only one stockholder regarded as dormant or inactive.

This action was being prosecuted by a corporation, all of the stock of which had been acquired by one person, who had demanded the resignation of the officers and directors. A question before the Supreme Court of North Carolina was concerned with whether that person should be made a party plaintiff. The court observed. "So the question arises: When one person acquires all the stock of a corporation, what then is the status of the corporation and the property held in its name? We are of the opinion and so hold that the corporation becomes dormant or inactive and exists only for the purpose of holding legal title of the property for the use and benefit of the single stockholder who becomes seized of the beneficial title to the property. Not possessing the managerial agencies—stockholders, directors, or officers,—contemplated by statute, it can no longer act as a corporation. Its decisions are the decisions of the single stockholder, and its action is his action." The sole stockholder was, therefore, regarded as a necessary party plaintiff to the suit.

*Park Terrace, Inc. v. Phoenix Indemnity Company*, 91 S. E. 2d 584. Spry, White & Hamrick and Dallace McLennan of Winston-Salem, for respondent. Brooks, McLendon, Brim & Holderness of Greensboro, for Phoenix Indemnity Co. Womble, Carlyle, Sandridge & Rice of Winston-Salem, and Broaddus, Epperly & Broaddus of Martinsville, Va., for Park Builders, Inc.



# foreign corporations

## MISSOURI

**Unlicensed foreign corporation, shipping goods into state in wholesale quantities, for resale by consignees, held not doing business and ruled entitled to maintain suit.**

The Supreme Court of Missouri, Division No. 2, noted at the outset that one of the questions on appeal was whether the respondent, as a foreign corporation not licensed in Missouri, had the right to maintain a suit for a judgment declaring an exclusive sales agency and distribution contract with the appellants to be terminated and cancelled. The trial court had ruled in favor of the respondent, holding that it was not doing business in the state within the meaning of Section 351.635, RSMo 1949, V.A.M.S. prohibiting the maintenance of a suit by a foreign corporation doing business in the state without a certificate of authority.

The respondent was engaged in the business of manufacturing, distributing, and selling steel products for use in concrete construction work. Its plants and offices were located in Chicago. Pursuant to a distributor's sales agreement, the appellants took orders in the respondent's name for merchandise in Oklahoma, Kansas and Western Missouri, and sent them to the respondent's offices in Chicago, where the orders were filled and the merchandise shipped directly to the purchaser. The appellants maintained a warehouse for consigned stock. Also, one of the appellants bought and sold the respondent's products on his own account, in addition to selling those products of the respondent which he had on consignment in his warehouse. The court remarked that "under the circumstances of this case the acts of respondent in selling its products at a discount and shipping them to appellants who in turn sold the products at a profit to the ultimate user did not constitute doing business in this state by respondent. This is the usual wholesale-retail arrangement. Therefore, if respondent is illegally doing business in this state it is by reason of the relationship between respondent and appellants in the operation of that part of the business done by appellants in warehousing and selling merchandise owned by respondent and in the possession of appellants on consignment."

Upon an examination of the facts, the court observed that the respondent shipped the consigned merchandise to the appellants f.o.b. Chicago which merchandise was warehoused by the appellants at their own expense. The appellants employed salesmen at their own expense to sell the products they handled. The respondents had neither a warehouse nor employees in Missouri. The distributor's sales agreement did not require the respondent to do business in the state.

The ruling of the trial court, holding that in performing under the distributor's sales agreement upon which

the suit was based, the respondent did not do business in Missouri, was upheld.

*Superior Concrete Accessories, Inc. v. Kemper, et al.*, 284 S. W. 2d 482. Roy P. Swanson, Richard G. Poland, Blackmar, Swanson, Midgley, Jones & Eager, of counsel, of Kansas City, for appellants. James C. Wilson, Colvin A. Peterson, Jr., Watson, Ess, Marshall & Enggas, of counsel, of Kansas City, for respondent.

### Statutory bar to use of courts by unlicensed foreign corporation regarded by Federal Court as removed by corporation's qualification.

Plaintiff Minnesota corporation, not not licensed in Missouri at a time when it entered into a contract of employment with an individual defendant, sought in a Federal Court in Missouri, in an action in equity, to enjoin that defendant and the corporate defendant, to whom he had revealed plaintiff's "trade secrets," from their further use, and for damages for their past and continued use. Defendants contended the contract was void and unenforceable, under Section 351.635, R. S. Mo., 1949. That section denies an unlicensed foreign corporation the right to maintain any suit or action, either legal or equitable, in any of the courts of the state, upon any demand, whether arising out of contract or tort, while the requirements of Chapter 351, providing for qualification, have not been complied with. Plaintiff had complied by qualifying seven months after entering into the contract.

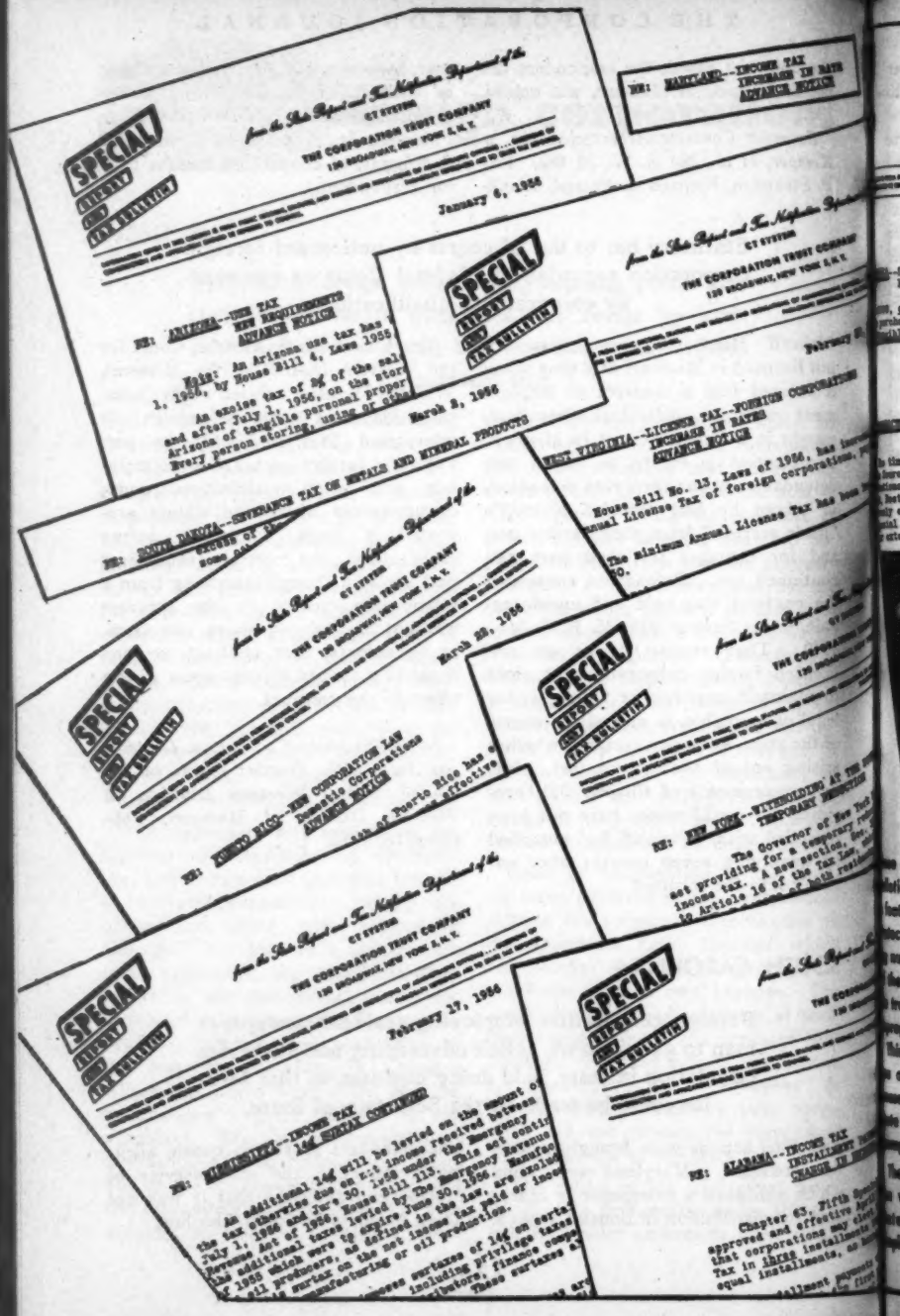
The United States District Court for the Western District of the Missouri, Western Division, refused to give summary judgment to the defendants. It interpreted Section 351.635 as permitting a foreign corporation to maintain suit, after qualification, under circumstances where the statute prevented it from doing so before qualification. The court also emphasized that the suit, though stemming from a relationship created by the contract was not, in any real sense, one upon, or to enforce, that contract, or one depending for its success upon giving effect to the contract.

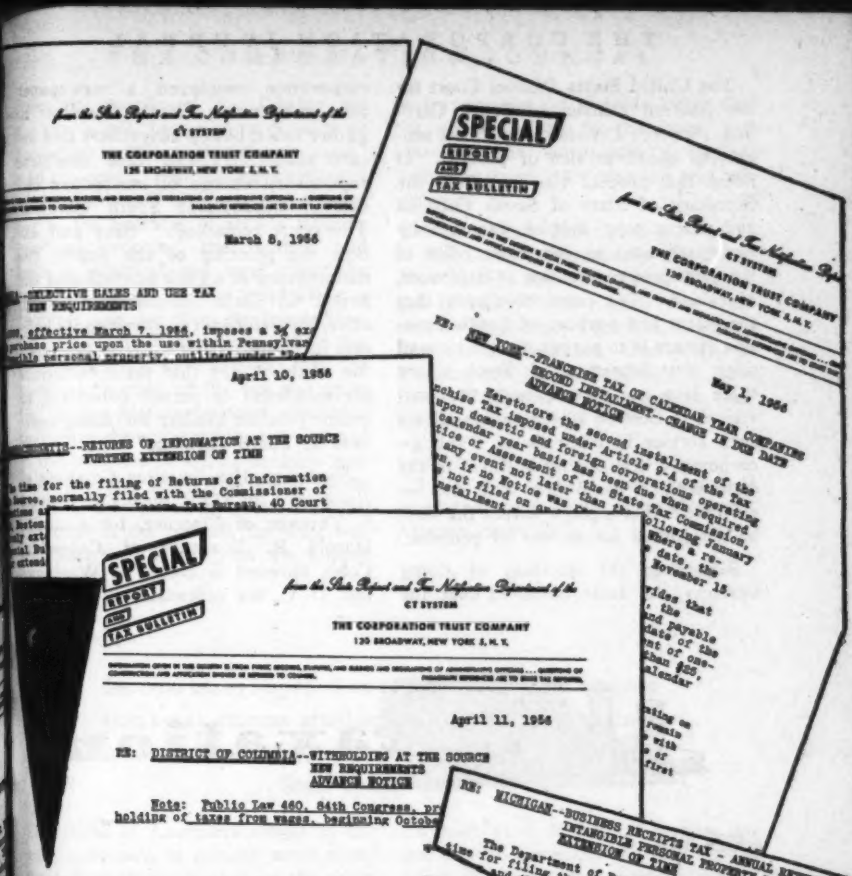
*Jerrold-Stephens Co., Inc. v. Gustaveson, Inc. et al.*, District Court of the United States, Western Division of Western District of Missouri, February 15, 1956.

## SOUTH CAROLINA

### Foreign corporation, employing resident newspaper man to gather news, solicit advertising and supervise circulation in state, held doing business so that service could be made on the Secretary of State.

Two libel actions were brought against the defendant, a Maryland corporation which published a newspaper in Maryland for distribution in South Carolina. The defendant moved to quash, alleging a defective and void service of process and asserting that it was not doing business in South Carolina.



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The United States District Court for the Eastern District of South Carolina, Florence Division, denied the motion to quash service of process. It noted that process was mailed to the Secretary of State of South Carolina and that a copy thereof was sent by registered mail to the home office of the defendant corporation at Baltimore, Maryland. The court concluded that the intent and purpose of South Carolina statute is to permit service by mail upon the Secretary of State where there is a compliance with the provisions of Section 10-424, which allows such service in the case of a foreign corporation transacting business in the state without complying with the requirement that a place within the state be designated for service of process.

Regarding the question of doing business, the facts disclosed that the corporation employed a newspaper man resident in South Carolina to gather news, obtain advertisers and secure subscribers and take complete supervisory charge of newspaper circulation throughout South Carolina. The court remarked: "Save and except the printing of the paper, the maintenance of a bank account and the actual 'in name' maintenance of an office, the defendant is *operating* its business in South Carolina. It is the opinion of this Court that these omissions are insufficient to permit defendant to escape possible liability for 'doing business' in South Carolina."

*Hunter v. Afro-American Company of Baltimore City*, 133 F. Supp. 812. Bennett & Turnage of Florence, for plaintiff. Harold R. Boulware of Columbia, Cobb, Howard & Hayes of Washington, D. C., for defendant.

## taxation

### ARIZONA

**Where manufacturer sold products to Federal government, legal incidence of gross income or sales tax held to be upon the seller.**

Appellee corporation was engaged in the business of manufacturing in Arizona, selling the products of its business to the United States government. The appellant commission levied an assessment on the gross receipts of these sales, which was paid under protest and this suit instituted for its recovery. The corporation contended that the gross income (sales) tax was in practical and legal effect a sales tax and that as such it imposed a direct tax upon the United States government and was void as violating the Federal government's immunity from state taxation.

The Supreme Court of Arizona observed that it had repeatedly held that the tax was a tax on the privilege or right to engage in business and that it was not a sales tax and that, regardless of whether the seller collects the tax

from the purchaser, the liability for the tax is still the personal liability of the seller. "Consequently we hold," said the court, "that the legal incidence of the tax is still on the person engaging in the business of selling tangible personal property, the retailer, and both in practical and legal effect the tax is upon the person conducting a business and not upon the transaction, the sale." Even assuming, solely for the purpose of the decision, that the economic burden of the tax was upon the United States, the court concluded that since the corporation was engaged in the business of selling tangible personal property under the taxing statute and was the one upon whom the legal incidence of the tax fell, the state was not collecting a tax from the United States government and the latter was not paying a tax to the state, and therefore the government's implied immunity from state taxation was not violated.

*Arizona State Tax Commission et al. v. The Garrett Corporation,** 291 P. 2d 208. Robert Morrison, Atty. General, and D. Kelly Turner, Asst. Atty. General, for appellants. Kramer, Roche & Perry and Raymond, Huffsteter, of Phoenix, and C. W. Leinbach, Jr., and Brian G. Manion of Los Angeles, Cal., for appellee.

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*The full text of this opinion is printed in the **State Tax Reporter,** Arizona, page 6362.

## LOUISIANA

### Income taxes imposed on portion of foreign corporation's net income attributable to interstate business done in Louisiana held not to violate Federal and State constitutions.

The State of Louisiana sought to enforce collection of income taxes from the defendant corporation for the years 1947 through 1950 on that part of the corporation's net income attributable to interstate business done or performed in the state. The corporation contended that the imposition of the taxes violated the interstate commerce clause of the Constitution of the United States and the due process clauses of the State and Federal constitutions. From an adverse judgment in the lower court, the defendant appealed to the Supreme Court of Louisiana.

The defendant corporation, not licensed to do business in Louisiana, operated as a common carrier in interstate transportation, in part in Louisiana waterways. It brought cargoes into and through Louisiana and took cargoes out of the state. None of the defendant's shipments originated and terminated in Louisiana. The corporation maintained an office and employees in the state.

The court remarked that "the tax here sought to be summarily collected is not in form nor in substance a tax on interstate commerce; nor is it a tax on gross income; nor is it a franchise tax. It is imposed only after defendant has ascertained all of its profits, all of its losses, and all of its expenses in the conduct of its business within the State of Louisiana. If there should be no income earned within the State, the defendant could not be taxed." The court observed that a state may collect an in-

come tax from a corporation engaged in interstate commerce based on its net income derived from within the state. In affirming the judgment below, the court ruled that these Louisiana income taxes were not violative of the commerce clause of the Federal constitution nor the due process clauses of the State and Federal constitutions.

*Fontenot v. John I. Hay Company,** 84 So. 2d 810. Lemle & Kelleher, Harry B. Kelleher, Thomas F. Jordan of New Orleans, for defendant-appellant. George C. Gibson of Baton Rouge, for appellee.

* The full text of this opinion is printed in the **State Tax Reporter**, Louisiana, page 12,159.

## OHIO

### Delaware corporation, maintaining no office in Delaware or elsewhere outside of Ohio and transacting all business from Ohio, ruled "doing business" in Ohio and subject to franchise tax.

Appellant Delaware company was the successor of an Ohio corporation of the same name, to which the latter had transferred its assets, consisting of real estate, bank deposits, accounts receivable, notes, patent rights, three automobiles, etc. No office was maintained in Delaware or elsewhere outside Ohio, and all officers resided in Ohio. The company had no bank account or any of its business transactions outside Ohio. Its dividends were declared and paid in Ohio. The company contended that it was not doing business in Ohio so as to be subject to the Ohio franchise tax.

The Ohio Supreme Court, affirming the Board of Tax Appeals, ruled that the company's property had a situs within the state so as to bring it within the franchise tax base.

*The Corner Co. v. Bowers, Tax Commissioner,** 164 O. S. 429, 131 N. E. 2d 581. Bert D. Bradley and Boer, Mierke, Thomas, McClelland & Handy of Cleveland, for appellant. C. William O'Neill, Atty. General, and Jack H. Bertsch of Columbus, for appellee.

* The full text of this opinion is printed in the **State Tax Reporter**, Ohio, page 11,449.

# state legislation

**Arizona** — A use tax of 2% of the sales price will be imposed on and after July 1, 1956, on the storage, use or consumption in Arizona of tangible personal property purchased from a retailer. Monthly returns are provided for and retailers are required to register with the State Tax Commission on or before July 30, 1956, under House Bill 4, Laws of 1955, Second Special Session.

**Colorado** — The credit of 20% of the net income tax otherwise due, which has been allowed in previous years, has been continued for the calendar year 1956 and for fiscal years beginning in 1956, by House Bill No. 40, Laws of 1956.

**District of Columbia** — Withholding at the source from employees is provided for, beginning October 1, 1956, in amendments effected by Public Law 460. Quarterly returns and payments begin January 31, 1957.

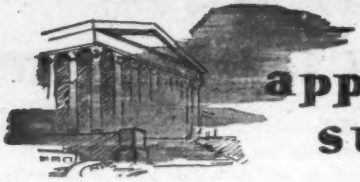
**Maryland** — The rate of the Maryland income tax imposed upon domestic and foreign corporations, has been increased from 4½% to 5% of the net income allocated to the state, beginning as of July 1, 1956, by Senate Bill No. 1, First Special Session of 1956.

**Pennsylvania** — House Bill 1591 effects a further postponement of the manufacturing exemption, with respect to Pennsylvania corporations, under the capital stock tax requirements, for an additional year, so that the exemption is now scheduled to become effective with respect to reports to be filed in 1959, for the calendar year 1958, and reports to be filed for fiscal years beginning in 1958.

House Bill 1591 also postpones for an additional year the manufacturing exemption of foreign manufacturing companies, to the extent it will apply in the future under the franchise tax requirements, so that it is now scheduled to become effective with respect to reports to be filed in 1959, for the calendar year 1958, or for reports to be filed for any fiscal year beginning in 1958. The act also provides that the gross receipts factor, used in apportionment in connection with the franchise tax, is not to include "receipts from the sale, redemption, maturity or exchange of securities, except those held by the taxpayer primarily for sale to customers in the ordinary course of its trade of business."

**Virginia** — Chapter 426 contains a new corporation law, to become effective January 1, 1957, and to be known as the "Virginia Stock Corporation Act", which is patterned after the American Bar Associations Model Act (Revised). In addition to enacting a new stock corporation law, this act revises, rearranges and recodifies the articles of the code dealing with non-stock associations, cooperative associations, securities and the "Uniform Stock Transfer Act".

Chapter 647 provides that "whenever in the Code of Virginia any mail or notice is required to be sent by registered mail, it shall constitute compliance with any such section if such mail or notice is sent by certified mail".



# appealed to the supreme court

***The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.****

**ARKANSAS.** Docket No. 793. *Leslie Miller, Inc. et al. v. The State of Arkansas,* 281 S. W. 2d 946. (The Corporation Journal, February—March, 1956, page 192.) Contractors' state license—government contracts—federal areas. **Appeal filed, March 23, 1956.**

**ILLINOIS.** Docket No. 66. *Riverbank Laboratories v. Hardwood Products Corporation,* 220 F. 2d 465. (The Corporation Journal, October—November, 1955, page 149.) Service of process on foreign corporation—doing business—soliciting orders. **Petition for writ of certiorari filed, May 11, 1955. Petition granted and case transferred to the summary calendar, October 10, 1955. Argued, January 16, 1956. April 2, 1956:** *"Per curiam*: The Court is of the opinion that the District Court correctly found there was proper service upon the defendant in this case. Accordingly, the judgment of the Court of Appeals is reversed and the case is remanded to the District Court for further proceedings. Mr. Justice Harlan took no part in the consideration or decision of this case." **(76 S. Ct. 648.) April 9, 1956:** Order entered on April 2, 1956, amended to provide for a remand of the case to the United States Court of Appeals for the Seventh Circuit. **(76 S. Ct. 656.)**

**NEW JERSEY.** Docket No. 63. *Werner Machine Co. v. Director, Division of Taxation,* 107 A. 2d 36, affirmed 110 A. 2d 89. (The Corporation Journal, December, 1954—January, 1955, page 55.) Franchise tax—inclusion of Federal tax-exempt bonds in basis. **Appeal filed, May 9, 1955. Jurisdiction noted, October 10, 1955. Argued, March 5 and 6, 1956. Affirmed, per curiam, March 26, 1956.** (76 S. Ct. 534.)

**OHIO.** Docket No. 316. *Raymond Bag Company v. Bowers,* 163 O. S. 275, 126 N. E. 2d 321. (The Corporation Journal, December, 1955—January, 1956, page 175.) Franchise tax base—inclusion of Federal securities. **Appeal filed, August 12, 1955. Motion to dismiss granted and appeal dismissed for want of a substantial Federal question, April 2, 1956. (76 S. Ct. 648.) Petition for rehearing denied, May 7, 1956.**

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* Data compiled from **CCH U. S. Supreme Court Bulletin, 1955-1956.**

# regulations and rulings

**Arizona** — A foreign corporation, not qualified to do business in Arizona, with employees in the state to whom it pays wages, is required to withhold from wages under the Income Tax Act of 1954. (Opinion of the Attorney General, State Tax Reporter, Arizona, ¶ 15-006.)

Competitive bids for public contracts to the Government, quoted as lump-sum or fixed prices, are evaluated on the basis of the ultimate cost to the Government and necessarily include the 2% privilege sales tax. (Opinion of the Comptroller General of the United States, State Tax Reporter, Arizona, ¶ 65-008.)

For income tax purposes, application must be made to the Tax Commission for permission to change the accounting period from a calendar year to a fiscal year. Application should be made before the close of the last calendar year. The Commission will require that a short period return be filed, and that the change be made also for Federal income tax purposes. (Ruling of State Tax Commission, State Tax Reporter, Arizona, ¶ 11-511.60.)

**Florida** — The Secretary of State may, in his administrative capacity, require a corporation to pay any unpaid and past due capital stock tax as a prerequisite to the filing of papers under the voluntary dissolution provisions. (Opinion of the Attorney General to the Secretary of State, State Tax Reporter, Florida, ¶ 1-450.90.)

**Georgia** — Although not specifically covered by law, it would appear that the Commissioner of Revenue has the authority to furnish information obtained from income tax returns to the county boards of tax assessors when there has been an official request for such information. (Opinion of the Attorney General, State Tax Reporter, Georgia, ¶ 200-053.)

**Massachusetts** — Compensation for personal services rendered by a nonresident wholly without the state is exempt from taxation regardless of the fact that payment may be made from a point within the state or that the employer is a resident individual, partnership or corporation. (Ruling of Commissioner of Corporations and Taxation, State Tax Reporter, Massachusetts, ¶ 15-201B.10.)

**Minnesota** — A foreign cooperative corporation deemed a nonprofit company in the state of its organization is not required to obtain a certificate of authority to do business in Minnesota unless organized under a law similar to Chapter 22 of the Minnesota Statutes which concerns cooperative marketing. (Opinion of the Attorney General to the Secretary of State, State Tax Reporter, Minnesota, ¶ 4-007.)

The listing of debentures by a foreign corporation with a licensed dealer in securities in Minnesota does not constitute doing business in that state. (Opinion of the Attorney General, State Tax Reporter, Minnesota, ¶ 4-008.)

**Nevada** — Qualified foreign corporations may act as "domestic lenders" in making loans upon real property in Nevada and may participate with unqualified foreign corporations in such transactions if the latter have complied with Chapter 228, Laws of 1955. (Opinion of the Attorney General, State Tax Reporter, Nevada, ¶ 200-061.)

# some important matters

## *For June and July*

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

**Alabama**—Quarterly Withholding Tax due on or before July 31.—Domestic and Foreign Corporations.

**Alaska**—Returns of Tax Withheld at the source due on or before July 31.—Domestic and Foreign Corporations.

**Arizona**—Quarterly Withholding Tax due on or before July 31.

**Arkansas**—Anti-Trust Affidavit due on or before August 1.—Domestic and Foreign Corporations.

**California**—Quarterly Retail Sales Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

**Colorado**—Quarterly Withholding Tax due on or before July 31.

**Connecticut**—Quarterly Retail Sales Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

**Delaware**—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

Withholding at source Returns due July 31.—Domestic and Foreign Corporations paying compensation to Delaware employees.

**Dominion of Canada**—Income Tax Return due on or before June 30.—Domestic and Foreign Corporations.

**Florida**—Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

**Idaho**—Annual Statement and Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

**Illinois**—Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

**Indiana**—Annual Report due within 30 days after June 30.—Domestic and Foreign Corporations.

Quarterly Gross Income Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

**Iowa** — Annual Report due between July 1 and August 1.—Domestic and Foreign Corporations.

Statement of Capital and Property Increase due at the time of filing the Annual Report in July.—Foreign Corporations.

Report of certain Transfers of Stock due on or before July 1.—Domestic Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

**Kentucky** — Statement of Existence due in June.—Foreign Corporations.

Verification Report as to process agent due in June.—Domestic and Foreign Corporations.

Quarterly Withholding Tax due on or before July 31.

**Maryland** — Quarterly Withholding Tax due on or before July 31.

**Michigan** — Report of Unclaimed Moneys, Securities, Credits, etc., due on or before June 30.—Domestic and Foreign Corporations.

**Mississippi** — Annual Franchise Tax Report and Tax due on or before July 15. —Domestic and Foreign Corporations.

Annual Report and Fee to Factory Inspector due in July.—Domestic and Foreign Corporations employing five or more persons in Mississippi.

**Missouri** — Annual Registration Statement and Anti-Trust Affidavit due on or before July 31.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 15.—Domestic and Foreign Corporations.

**Montana** — Annual License Tax based on net income due on or before June 15. —Domestic and Foreign Corporations.

**Nebraska** — Annual Report and Franchise (Occupation) Tax due on or before July 1.—Domestic Corporations.

Annual Report and Franchise (Occupation) Tax due during July.—Foreign Corporations.

**Nevada** — Annual List of Officers and Designation and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

**North Carolina** — Annual Franchise Tax Report and Tax due on or before July 31.—Domestic and Foreign Corporations.

**North Dakota** — Corporation Report due during July.—Domestic Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

**Ohio** — Retail Sales Tax Returns and Vendors' Excise Tax due on or before July 31.—Domestic and Foreign Corporations.

**Oklahoma** — Annual Capital Stock Affidavit due between July 1 and August 1.—Foreign Corporations.

Annual Franchise Tax Return and Payment due between July 1 and August 31.—Domestic and Foreign Corporations.

**Oregon** — Annual Statement due between June 1 and August 15.—Domestic and Foreign Corporations.

Annual License Fee due within 30 days after July 15.—Domestic Corporations.

Quarterly Withholding Tax due on or before July 31.

Annual License Fee due between July 1 and August 15.—Foreign Corporations.

**South Dakota** — Quarterly Retail Sales Tax Returns and Payments due on or before July 15.—Domestic and Foreign Corporations.

**Tennessee** — Annual Privilege (Franchise) Tax Return and Payment, Annual Report and Tax and Excise Tax Report and Tax due on or before July 1.—Domestic and Foreign Corporations.

Report of Dividends paid to residents due on or before July 1.—Domestic and Foreign Corporations.

**United States** — Second Installment of Income Tax due June 15.—Domestic Corporations and Foreign Corporations having offices or places of business in the United States.

**Utah** — Quarterly Retail Sales Tax Returns and Payments due on or before July 30.—Domestic and Foreign Corporations.

**Vermont** — Quarterly Withholding Tax due on or before July 31.

**Washington** — License Fee due on or before July 1.—Domestic and Foreign Corporations.

**West Virginia** — License Tax Statement due on or before July 1.—Domestic Corporations.

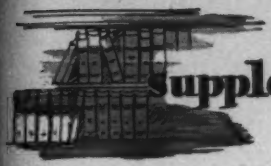
Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal place of business or chief work was located in other states.

Quarterly Business and Occupation (Gross Sales) Tax Returns and payments due on or before July 31.—Domestic and Foreign Corporations.

**Wisconsin** — Second Installment of Income Tax due on or before August 1.—Domestic and Foreign Corporations.

**Wyoming** — Annual Statement and License Tax due on or before July 1.—Domestic and Foreign Corporations.



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*In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.*

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THE CORPORATION TRUST COMPANY
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